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**Volume 14, No. 2                      FOR REAL ESTATE LICENSEES                      November, 2001**

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**A Message from the Chair**

**By James R. Imhoff, Jr.**

With the tragic events of September, I have been pondering just what real estate issues might be appropriate to share with the real estate licensees of Wisconsin. I have begun to write comments about buyer agency, lender fraud, professional cooperation, but my thoughts continue to fail. Not that these issues are not pertinent and timely, it's just that their relevancy to our everyday life seems so miniscule.

In the past few weeks, our nation has begun to heal, and heal by rediscovering what really is important -- our families, friends, neighbors, and all whom we care about. If we as an industry could truly adopt that spirit of caring: caring for our clients, our customers, our fellow licensees, and all who are affiliated in the real estate transaction, we might not need a regulatory agency.

Simply caring, caring in a compassionate sense would drive us all in professionalism, ethics, tolerance, and judgment of and towards others. Treating everyone as a friend, being more patient, being less judgmental, and being a better communicator are great first steps.

To this end, I would share with you excerpts from a letter of response I sent this summer to a licensee who had expressed concerns about certain real estate practices.

"I have read through your letter a number of times and I am very sympathetic to your concerns. Many of the issues you point out do fall within the venue of the local MLS and are not governed by the REB. These issues would relate to the delays in entering the listings on the MLS, and your questions should legitimately be posed to the appropriate parties with the MLS.

Your concern with the timely presentation of offers is of direct concern to the REB. However, we cannot act without a specific complaint and a complaint that can be documented with written evidence or third party testimony. Simple hearsay or conjecture is insufficient.

I have been in the business for 30 years and have served in many capacities with the industry, including my service with the REB since 1994. My experiences would say that Wisconsin is blessed with an overwhelming number of professional, ethical, and dedicated licensees. We have a few that dishonor the industry, and we have a few that make an unintended mistake on occasion.

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**THE WISCONSIN REAL ESTATE BOARD**

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In many of my investigations both at the REB and in my own firm, I have found many of the problems stem from lack of communication between the licensees involved in the transaction. We as an industry are too ready to blame the other licensee, instead of investigating as to why certain decisions were made or why a certain practice was followed.

I am not downplaying your issues because I know in some instances the practice you point out does exist. However, I also know from experience that oftentimes there are legitimate explanations for what transpired in a specific circumstance.

For example, the complaint often arises that when a co-broke delivers an offer to the listing firm and receives a rejection in favor of another offer, the implication is that the accepted offer was "in house" giving two sides to the listing company. In reality what I have found is that the accepted offer was also from a co-broke or was substantially higher than the other offer.

But the licensee who wrote the offer that was rejected blames the listing agent instead of taking some responsibility for writing a low offer. This message is then passed on to the consumer and we as an industry look unprofessional when a simple explanation between the two licensees could have provided clear understanding of the facts.

Again, I do sympathize with your concerns. The best way to proceed is to document the facts of issues like you mention and then take this evidence to the appropriate venue, be it the local Realtors Association, the MLS, or the REB. **But most importantly, keep working with the professional and ethical spirit you appear to have. Nothing works better in our industry than simply setting a good example for others."**

My best to all licensees and a wish for all of you in the months ahead to renew a spirit of truly caring and for setting an example for others to follow.

### Licensing Statistics

The number of licensees, as of October 15, is as follows:

Brokers	13,025
Salespersons	9,978
Business Entities	2,102
Timeshare Salespersons	108

### Enforcement of Disciplinary Orders

Every meeting of the Real Estate Board is preceded by a notice that is distributed to the media and others. Such meeting notices include the names of licensees who are the subject of a proposed disciplinary action that will be considered by the Board at that meeting. Disciplinary

actions that are taken by the Department and all of its boards are listed in a press release that the Department prepares each month. Therefore, as you can see, the public is able to obtain timely information about disciplinary actions that may be taken by a board and actions that have actually been taken by a board.

There are some precautions, however, that the Real Estate Board would like to point out. Not all disciplinary orders state that the disciplinary action is effective on the date of the Board's action. Some Orders have a delayed effective date. Be sure to read the Order carefully.

What has caused considerable confusion for some people over the years has been the fact that a respondent in a disciplinary action may file a petition for judicial review in the circuit court in which the respondent resides. The respondent must file a petition for review within 30 days following personal service or mailing of the final decision by the Board. Before filing such a petition, a respondent has a right to petition the Board for a rehearing; however, the processing of requests for rehearing does not cause as much confusion as when a respondent petitions the court for a review of the Board's decision.

Usually, the petitioner will ask the court for a stay of the Board's disciplinary order. Usually, the court will grant a stay until the court has rendered a decision on the matter. The confusion relating to such actions is that the Board may have suspended or revoked a license; however, if the respondent obtains a stay from the court, the Board will not be able to enforce its disciplinary order until and if the court permits the Board to do so. This means that a local board of Realtors or an MLS may not be able to remove the licensee from membership on the Board and may not be able to prevent the licensee from participating in MLS services until the licensee has exhausted all of his or her due process rights.

### Denial of Renewal Due to A Tax Problem

The name of every licensee who files an application for renewal is run through a comparison file with the Department of Revenue (DOR). If a licensee is in arrears in paying taxes to DOR or is not complying with any schedule that may have been established, a red flag comes up and there may be a delay in renewing the license. Whenever there is a name match, the Department of Regulation and Licensing consults with DOR and, if indeed, there is a problem, sends a notice of denial of renewal to the licensee. In such cases, staff in the Department, other licensees and the public may be wondering whether the licensee may legally engage in the practice of real estate?

To answer that question one must ask a few additional questions. First, did the licensee file a timely renewal application? If the Department determines that the licensee did file a timely renewal application, the licensee may continue to practice even though his or her license has not

yet been renewed. The licensee may continue to practice until the license renewal is denied after the licensee has had an opportunity to exercise his or her due process rights. If the licensee's renewal application is denied, the licensee will be prohibited from practicing until the licensee has resolved the problem with DOR and obtained a license renewal from the Department.

On the other hand, if a licensee has not filed a timely renewal application, the licensee may not practice after the license expiration date of December 31. The licensee would only be permitted to resume practice after the licensee has obtained a renewed license.

Indeed, these policies and procedures can cause confusion to licensees and consumers; however, the confusion must be endured by all, out of respect for the due process rights of licensees.

### **Law Changes in Biennial Budget Bill**

Governor Scott McCallum signed the Biennial Budget Bill into law as 2001 Wisconsin Act 16. It had several items that directly affect real estate licensees.

#### Licensee Fees

Brokers - ~~\$019~~ \$128  
Salespersons - ~~\$79~~ \$83  
Business Entities - ~~\$57~~ \$56  
Time-share Salesperson - ~~\$103~~ \$119

#### Supervision of Employees

Section 452.07 (1m) of the Wisconsin Statutes was created to read: "The department shall promulgate rules that specify the supervisory duties of brokers under s. 452.12 (3)."

Section 452.12 (3) of the Wisconsin Statutes was amended, as follows: "BROKER'S LIABILITY FOR ACTS OF EMPLOYEES. Each broker shall supervise, and is responsible for the acts of, any broker, salesperson, or time-share salesperson employed by the broker."

Section 452.12 (3) (b) of the Wisconsin Statutes was repealed. ~~"If a broker maintains any branch offices in this state, each branch office must be under the direct full-time supervision of a broker. the broker maintaining the branch office shall be responsible for the acts and conduct of all brokers, salespersons and time-share salespersons employed at the branch office."~~

#### Registration of Real Estate Closing Agents Vetoed

The Biennial Budget Bill called for the registration of real estate closing agents. "Closing agents" were defined as "any person who coordinates the closing of a conveyance of real estate by ensuring that title to the real estate is transferred to the buyer and that the

purchase price is transferred to the seller, except that 'Closing agent' does not include any of the following...." This proposed new regulation was opposed by the Department, the Real Estate Board, the Wisconsin Realtors Association and the Wisconsin Land Title Association. Governor Scott McCallum vetoed this part of the Budget Bill.

### **Impact of Statutory Changes in Budget Bill**

Brokers are no longer required to have a full-time broker-manager at each of their branch offices. However, the provisions in Chapter RL 17, Wis. Admin. Code, continue to be in effect until amended by any rulemaking that the Board and the Department intend to undertake following the statutory changes.

Sections RL 17.08, 17.09 and 17.10, Wis. Admin. Code, are still in effect; however, they may be revised next year. These sections of the rule are printed below:

**RL 17.08 Supervision of employees. (1)** A broker-employer shall supervise the activities of any licensee employed by the broker-employer. Supervision includes but is not limited to reviewing all listing contracts, offers to purchase, trust account records and other documents related to transactions. A broker-employer may delegate this responsibility to other brokers. Broker-employers shall provide all licensed employees with a written statement of procedures under which the office and employees shall operate with respect to handling leases, listing contracts, offers to purchase and other documents relating to transactions.

**(2)** A broker-employer shall be responsible for the preparation, custody, safety and correctness of all entries on real estate forms, closing statements and other records even though another person may be assigned these duties by the broker-employer.

**RL 17.09 Supervision of principal offices. (1)** A broker-employer shall either personally supervise licensed employees working in the principal office or delegate the supervisory responsibility in writing to any licensed broker.

**(2)** During an extended absence of the broker-employer from a principal office, the broker-employer shall delegate the supervisory responsibility to another broker in writing.

**RL 17.10 Supervision of branch offices. (1)** A branch office manager shall supervise licensees employed at a branch office.

**(2)** A broker-employer shall:

- (a) Designate supervisory authority to a branch office manager in writing.
- (b) Maintain a list of all licensed employees and the branch office location to which each licensed employee is assigned.
- (c) Display on or about a branch office a conspicuous sign as required in s. 100.18 (5), Stats.
- (d) Delegate supervisory responsibility for the branch office in writing to any licensed broker during an extended temporary absence of a branch office manager.

**(3)** Only a broker-employer may execute a transfer application for licensees at a branch office.

**RL 17.11 Supervision outside of principal or branch office.** The broker-employer or the manager of the

branch office located nearest to an office established solely for the initial sale of subdivision lots or condominium units shall supervise licensees who engage in real estate activities at this office.

### **Payment of Referral Fees to Home Inspectors**

Wisconsin home inspectors operate under some referral fee prohibitions that are rather similar to those that apply to real estate agents. Section 440.975 (7) (e) of the Wisconsin Statutes prohibits a home inspector from doing the following: "Pay or receive directly or indirectly, in full or in part, for a home inspection or for the performance of any construction, repairs, maintenance or improvements regarding improvements to residential real property that is inspected by him or her, a fee, a commission, or compensation as a referral or finder's fee, to or from any person who is not a home inspector." The Department has received several complaints regarding the payment of something of value for referrals between real estate brokers and home inspectors. Please keep this law in mind as you develop your procedures for arranging for home inspections.

### **Timeshare Forms**

Two of the three time-share revised forms should be available at your favorite forms providers around the time you read this Digest. They are: WB-8 Timeshare Listing Contract and WB-27 Time-share Contract (Resale by Non-Developer). A third form, WB-26 Timeshare Contract (Sale by Developer), was sent to the Department of Financial Institutions (DFI) for review of the truth-in-lending provisions. DFI suggested quite a few revisions and those changes will have to be made before the form becomes available for use by licensees.

### **Megan's Law Disclosures in Contractual Forms**

During the past year the Wisconsin Legislature revised some of the provisions regarding Megan's law. Pursuant to those changes, real estate licensees may wish to make some disclosures to sellers and buyers in a real estate transaction. Some forms providers have modified the approved form by including several unnumbered lines for the disclosure. Other providers have prepared an addendum for the disclosure. A typical disclosure statement reads as follows: "Notice: you may obtain information about the sex offender registry and persons registered with the registry by contacting the Wisconsin Department of Corrections on the internet at <http://www.widocoffenders.org> or by phone at 877-234-0085." For more information about the Sex Offender Registry, go to the Web site.

### **Mortgage Fraud**

We've said it before and we'll say it again: Don't get involved in anything that looks or smells like mortgage fraud. At a meeting on June 28, 2001, the Board urged staff in the Division of Enforcement to aggressively pursue these cases.

### **Suggestions of the Board**

Also at its meeting of June 28, 2001, the Board urged licensees to give proper attention to disclosure of agency, the completion of contractual forms, and the need for language in contracts that can be understood by all. The Board noted that there is a world of difference between the use of "accepted" and "excepted" in a contract.

## **2001-2002 REAL ESTATE CONTINUING EDUCATION REQUIREMENTS**

All licensees, except those who were issued **either a Wisconsin broker's or a salesperson's license after January 1, 2001**, must satisfy the continuing education requirement during 2001-2002 in order to renew their license in a timely manner in the fall of 2002. The license renewal deadline is December 31, 2002. Licensees may complete the 2001-2002 continuing education after that date; however, the Department may not renew their license until such licensees complete the education and pay a late renewal fee.

**There are 2 alternatives for completing the continuing education requirement:**

### **Alternative # 1 Continuing Education Courses Approved by the Department**

Four courses of at least 3 hours in length at a school approved by the Department. The 4th Course ONLY has options, which relate to specific areas of practice. Note that some schools are now offering these courses by distance learning (videotape, CD-rom, the Internet, etc.). **The Department must approve a school before it offers courses and grants a certificate of attendance to a licensee.**

Course 1	Use of Forms and Contract Law (Everyone must take.)
Course 2	DRL Practice Guidelines and Broker Ethics (Everyone must take.)
Course 3	New Developments (Everyone must take.)
Course 4A	General Real Estate Elective (Everyone must take this elective <b>OR</b> one of the other 4 electives.)
Course 4B	Supervising Broker Elective (Everyone must take this elective <b>OR</b> one of the other 4 electives.)
Course 4C	Commercial Elective (Everyone must take this elective <b>OR</b> any of the other 4 electives.)
Course 4D	Property Management Elective (Everyone must take this elective <b>OR</b> one of the other 4 electives.)
Course 4E	Rural/Farm/Vacant Land Elective (Everyone must take this elective <b>OR</b> one of the other 4 electives.)

### **Alternative # 2: Continuing Education Test-Out Exam**

This alternative will be available from July 1, 2001, until June 30, 2002. An exam brochure and an exam application form are available from the Department. Study materials may be purchased from the Department for \$6.00 (including tax, handling and postage).

## Disciplinary Actions

### **DARRELL G HARDING BROOKFIELD WI**

Commingled \$1,000.00 of his personal funds or funds received from others into the Realty Executives trust account. Was a principal rather than an agent, yet received compensation as an agent in two transactions. Paid his unlicensed brother-in-law to act as a strawman. \$1,000.00 costs. \$500.00 forfeiture. Suspend 6 months effective 2/22/2001. RL 18.10, 24.025, 24.03(2)(b), 24.05(1), (2),(4), 24.07(2). Secs. 452.14(3)(i),(j),(k)(L), 452.19, Stats. Case #LS0102221REB

### **JULIUS O KAULFUERST COLGATE WI**

### **SUSPENDED/ COSTS/FORFEITURE**

Was a principal rather than an agent, yet receiving compensations as an agent, in two real estate transactions without the knowledge and/or written consent of the buyer and the seller, and failed to disclose to them that another individual was a strawman who was insolvent as to this transaction. Suspend for two months. Complete education. Costs of \$1,000.00 and a forfeiture of \$500.00. Effective 6/28/2001. Secs. 452.14(3)(b),(d),(i),(k), Stats. RL 24.025, 24.03(2)(b), 25.05(1), 24.05(2),(4) Case #LS0106282REB

### **JON S SCHUSTER      SUSPENDED/FORFEITURE/COSTS RAINBOW AUCTION &      REPRIMAND/ REALTY CO INC      FORFEITURE/COSTS ONALASKA WI**

Paid or offered to pay a commission or valuable consideration to an unlicensed person. Drafted a contract for payment of a commission to an unlicensed person. Drafted a fee-splitting agreement on a form not approved by the department. Failed to disclose to a bank in writing and in a timely manner, the legal prohibition of an unlicensed person to share in a commission for the sale of property. Aided and abetted an unlicensed person's acting as an unlicensed real estate broker. Schuster's license is suspended for 6 months; ordered to pass all of the real estate prelicensing curriculum before his license is reinstated; and pay a forfeiture in the amount of \$5,000.00. Rainbow Auction & Realty Co. is reprimanded and pay a forfeiture in the amount of \$5,000.00. Costs are imposed against both. Effective 6/28/2001. Sec. 452.14(3)(i),(j), Stats. RL 24.025, 16.04(2),(3), 24.07(1),(1)(c), 24.17(1),(3) Case #LS0005301REB

### **ANTHONY J BOGDANOVICH SAINT GERMAIN WI**

### **REPRIMAND/ COSTS/EDUCATION**

Failed to diligently exercise reasonable skill and care in providing brokerage services. Located property boundary lines of property at a time that he was not licensed as a registered land surveyor. Complete prelicensing education in contracts, business ethics and consumer protection. Costs of \$2,000.00. Effective 4/26/2001. Secs. 452.133(1)(b), 452.14(3)(i),(L), 443.01(4), Stats. RL 24.17(1) Case #LS0005171REB

### **GREGORY D SLAPAK LA CROSSE WI**

### **SUSPENDED/COSTS**

Made a substantial misrepresentation with reference to a transaction injurious to a seller or purchaser. Failed to provide brokerage services to all parties to the transaction. Failed to protect the public against fraud, misrepresentation and unethical practices. Failed to put in writing listing contracts, buyer agency agreements. Failed to send to the department a judgment of conviction or complaint. Suspend one year effective 5/2/2000. Complete 3 hours of course in ethics. Costs of \$1,000.00. Secs. 452.14(3)(b),(k), 452.133, Stats. RL 24.07(2), 24.03(2)(b), 24.08, 24.17 Case #LS0005121REB

### **GRANT R WOOD APPLETON WI**

### **REPRIMAND/COSTS/EDUCATION**

Failed to disclose in writing to buyers a notice of public hearing regarding street improvements on a section of property where they resided. Complete educational courses on Taxes and Other Liens

and Ethical Real Estate Practices. \$250.00 costs. Effective 3/22/2001. Secs. 452.133(1)(c), 452.14(3)(i),(L), Stats. RL 24.025(1), 24.07(2),(3) Case #LS0103221REB

### **LARRY F BUZZELL CAYMAN REALTY, INC. WEST ALLIS WI**

### **VOLUNTARY REVOCATION**

Failed to provide the required written disclosure of agency to consumers and provided brokerage services to those consumers without a written agency agreement. Failed to make timely and appropriate disclosure to the consumers of the basement foundation defects and failed to obtain required building permits for the remodeling of the basement and the foundation repairs. Voluntary revocation. Effective 4/26/2001. Secs. 452.14(3)(a),(i),(k),(L),(m), Stats. RL 24.07(2), (3), (8)(a),(c), 24.03(2)(b), 24.17(1), 16.04, 23.04 Case #LS0101081REB

### **STEVEN S SIMONOVICH PLEASANT PRAIRIE WI**

### **LIMITED/FORFEITURE**

The U.S. Department of Housing and Urban Development (HUD) issued a letter of "limited denial of participation" based upon having engaged in irregularities in his performance in a HUD program and having made false certifications in connection with a HUD program. Forfeiture of \$1,000.00. Complete the 72 hour prelicensing real estate salesperson course. Limited for 12 months effective 7/3/2001. Sec. 452.14(3)(i),(k), Stats. Case #LS0106283REB

### **DANIEL J NAVIN KENOSHA WI**

### **LIMITED/FORFEITURE/COSTS**

The U.S. Department of Housing and Urban Development (HUD) issued a letter of "limited denial of participation" based upon having engaged in irregularities in performance in a HUD program and having made false certification in connection with a HUD program. Limited for 12 months effective 7/3/2001. Pay forfeiture of \$1,000.00. Complete the 36 hour prelicensing course for real estate brokers. Sec. 452.14(3)(i),(k) Case #LS0106281REB

### **RICHARD D RONNE JANESVILLE WI**

### **VOLUNTARY REVOCATION**

Convicted of crimes involving activity in fraudulent investment schemes, including fraud in the sale of real estate investments. Failed to report this conviction to the department. Effective 2/22/2001. Sec. 452.14(3)(i), Stats. RL 24.17(1),(2) Case #LS0101021REB

### **SHAWN M ANDERSON EAU CLAIRE WI**

### **VOLUNTARY SURRENDER**

Convicted of both misdemeanor and felony insurance fraud and theft. Did not notify the board of his conviction or the circumstances surrounding it. Will not be allowed to reapply for licensure for five years. Effective 6/28/2001. RL 24.176(1),(2) Case #LS0104121REB

### **STREBLOW REAL ESTATE INC FOND DU LAC WI**

### **REPRIMAND**

Failed to deposit earnest money check within 48 hours of receipt. Failed to immediately replace the incorrectly disbursed trust funds of \$3,500.00. Failed to do required monthly account reconciliations, trial balances and validations. Effective 8/23/2001. RL 18.031, 18.09, 18.13(2),(3),(4),(5) Case #LS0108231REB

### **JOEL S STREBLOW FOND DU LAC WI**

### **REPRIMAND/ COSTS/FORFEITURES**

Failed to deposit earnest check money within 48 hours of receipt. Failed to immediately replace the incorrectly disbursed trust funds of \$3,500.00. Failed to do required monthly account reconciliations, trial balances and validations. Complete course modules from the 36 hour prelicensing course. Forfeiture of \$300.00. Costs of \$350.00. Effective 8/23/2001. RL 18.031, 18.09, 18.13(2),(3),(4),(5) Case #LS0108231REB

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## Telephone Directory

The Department of Regulation and Licensing has recently implemented an IVR Auto-Attendant Telephone System. This system may be accessed 24 hours a day for computerized licensing information. We ask for your patience as we perfect the system and remove some of the bugs we have encountered. You may continue to dial the following telephone number; **however, the extension numbers that had been published in past issues of the Regulatory Digest are no longer valid.** Please listen to the new menu for the new extension numbers. The number to dial is:

**(608) 266-5511**

Our Fax Number is: **(608) 267-3816**

## Visit the Department's Web Site at:

[www.drl.state.wi.us](http://www.drl.state.wi.us)

For our new "Online Verification of Credential Holders" click on the "Business and Professional License Lookup" button on the Department's home page.

Copies of the Regulatory Digest are on the Web.

Send comments to [dorl@drl.state.wi.us](mailto:dorl@drl.state.wi.us)

## Board Meetings in 2002

Usually, the 4<sup>th</sup> Thursday of the month, unless cancelled. However, the November and December meeting dates are replaced by one meeting date: the first Thursday in December.

## Wisconsin Statutes and Code

Copies of the Real Estate Board Statutes and Administrative Code can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the

amount of \$5.28. The latest edition is dated February, 2001.

## Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes is not automatically provided.

**WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.**

## Subscription Service

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